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Enforcing the One-Subject Rule: The Case for a Subject Veto

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Note

Enforcing the One-Subject Rule: The Case for a Subject Veto

The legislative practices of "logrolling" and attaching "riders"[1] to important bills are well-known and long-criticized aspects of the American legislative process.[2] These practices facilitate "pork barrel" legislation which establishes unnecessary programs that benefit a small group, usually a particular legislator's constituency.[3] These practices are criticized because they permit the enactment in "omnibus legislation" of measures that, standing alone, are incapable of commanding the support of the legislature.[4] In addition, legislatures sometimes use both riders and logrolling to render the executive veto power ineffective.

While these practices occur on both the federal and state levels, the states have made the greatest efforts to curb them. These efforts consist primarily of two devices not present in the federal legislative process.[5] The first is the one-subject rule, which restricts the legislature from in-

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1. Logrolling is the "legislative practice of embracing in one bill several distinct matters, none of which, perhaps, could singly obtain the assent of the legislature, and then procuring its passage by a combination of the minorities in favor of each of the measures into a majority that will adopt them all." BLACK'S LAW DICTIONARY 849 (5th ed. 1979).

A rider is a nongermane amendment to a bill that appears destined for passage. Its purpose often is to "veto-proof" the measure. Because the main bill may be desirable or even crucial legislation, the chief executive often is forced to sign the rider into law, even though he or she might have vetoed the provision if it stood alone. W. KEEFE & M. OGUL, THE AMERICAN LEGISLATIVE PROCESS 210 (6th ed. 1985). Although riders are most commonly attached to appropriation bills, they are sometimes added to other important legislation. B. GROSS, THE LEGISLATIVE STRUGGLE 221 (1953).

2. *E.g.*, R. LUCE, LEGISLATIVE PROBLEMS 356 (1935) [hereinafter R. LUCE, PROBLEMS]; R. LUCE, LEGISLATIVE PROCEDURE 542-44, 548-52 (1922) [hereinafter R. LUCE, PROCEDURE]; Note, *The Legislative Rider and the Veto Power*, 26 GEO. L.J. 954 (1938).

3. J. PLANO & M. GREENBERG, THE AMERICAN POLITICAL DICTIONARY 218 (7th ed. 1985).

4. *See, e.g.*, Ruud, *"No Law Shall Embrace More Than One Subject"*, 42 MINN. L. REV. 389, 448 (1958). Omnibus legislation refers to a "bill including in one act various separate and distinct matters, and frequently one joining a number of different subjects in one measure in such a way as to compel the executive authority to accept provisions which he does not approve or else defeat the whole enactment." BLACK'S LAW DICTIONARY 980-81 (5th ed. 1979). One of the most notorious examples of omnibus legislation is the so-called "Christmas Tree" bill passed by Congress in 1966, to which 49 irrelevant measures were attached. D. PEARSON & J. ANDERSON, THE CASE AGAINST CONGRESS 322 (1968).

5. The United States Constitution places no limitation on the drafting of legislation, so

cluding more than one subject in a bill.[6] The second is the item veto, which enables the governor to strike "items" from appropriation bills.[7]

As a practical matter, however, these devices do not prevent state legislatures from engaging in logrolling or using riders. Political pressure and judicial deference to the legislature combine to limit the efficacy of the one-subject rule in curbing these activities. Similarly, the item veto, depending on the jurisdiction, is of limited value partly because it generally applies only to appropriation bills and partly because many courts read the word "item" narrowly.

These shortcomings raise the issue of whether the one-subject rule and item veto presently produce the legislative-executive balance of power intended by their drafters. In other words, regardless of the independent desirability of these two devices, the question remains whether the courts are applying them in a manner consistent with the overall state legislative process. This Note contends that they are not. Accordingly, the Note proposes judicial recognition of a gubernatorial "subject veto" power. Such a power would enable governors in states with a one-subject rule to disapprove segments of *any* bill, provided the portion vetoed comprises a separate, nongermane subject, discrete from the rest of the bill. The subject veto would distribute power between the legislative and executive branches in accordance with the purposes of the one-subject rule and the item veto.

Much of the discussion in this Note applies to all states that have adopted some form of the one-subject rule. However, it will focus on a few illustrative judicial decisions and California law in particular, since the California Supreme Court is currently considering a case which presents such an issue.[8] Even among states with a one-subject rule, differences in language and interpretations exist, and the Note accordingly discusses and compares some of the more significant differences.

Because the issue is not simply a legal one, but also one of state political philosophy, the Note briefly reviews both the historical and legal background and purposes underlying the one-subject rule and the gubernatorial veto power. Section I discusses the foundations of the one-sub-

omnibus bills are relatively common. In addition, the Constitution gives the President no item-veto power over appropriation legislation.

6. *See generally* Ruud, *supra* note 4.

7. *See generally* J. KALLENBACH, THE AMERICAN CHIEF EXECUTIVE 361-77 (1966); Fairlie, *The Veto Power of the State Governor*, 11 AM. POL. SCI. REV. 473 (1917); Prescott, *The Executive Veto in American States*, 3 W. POL. Q. 98 (1950). The precise definition of an item of appropriation is a matter of considerable controversy. As a general rule, however, an item is an allocation of money for a particular purpose. Thus, it consists of two parts: a sum of money and instructions for its expenditure. *See infra* text accompanying notes 79-129.

8. Harbor v. Deukmejian, 176 Cal. App. 3d 813, 222 Cal. Rptr. 382, *review granted*, Apr. 3, 1986 (S.F. 24837), *reprinted without change to permit tracking pending review*, 185 Cal. App. 3d 299 (1986); *see supra* notes 118-29 and accompanying text.

ject rule and the development of executive power to disapprove legislation. Section II analyzes several judicial decisions interpreting the one-subject rule and the item veto. Finally, section III proposes the subject veto and considers some potential rationales and objections regarding such a device.

I. The One-Subject Rule and the Gubernatorial Veto Power

A. The One-Subject Rule

Objections to combining unrelated matters in one bill certainly are not new. Indeed, ancient Rome banned the practice.[9] In the political history of the United States, efforts by state governments to curb such activity have become increasingly common. Although none of the original thirteen states prohibited omnibus legislation, the one-subject rule had gained widespread acceptance by the end of the nineteenth century.[10] At present, forty-one states have some form of constitutional one-subject rule.[11] California's version, which is substantially similar to the rule in other states, reads: "A statute shall embrace but one subject, which shall be expressed in its title . . . ."[12] The specific language of other state constitutions sometimes differs, but these differences rarely affect the rule's operation.[13]

Courts and commentators offer several reasons for the one-subject rule, including the prevention of deception[14] and the preservation of an orderly legislative process.[15] But these rationales are secondary to the rule's main focus. According to Professor Ruud, "[t]he primary and uni-

9. Ruud, *supra* note 4, at 389.

10. *Id.* at 389-90.

11. *Id.* at 389. The nine states without a one-subject rule are Arkansas, Connecticut, Maine, Massachusetts, New Hampshire, North Carolina, Rhode Island, Vermont, and Wisconsin.

12. CAL. CONST. art. IV, § 9. In most states, the unity of subject matter requirement is linked to a provision requiring that each bill contain a title expressing the subject matter of the bill. The title rule is a distinct requirement, differing in function and purpose from the one-subject rule. "The primary purpose of the title requirement is to prevent surprise and fraud upon the people and the legislature." Ruud, *supra* note 4, at 392.

13. A few states—Louisiana, Michigan, New Jersey, West Virginia, and Virginia—limit bills to one "object." Some courts have interpreted "object" to mean the "aim" or "purpose" of the bill. *See, e.g.*, Pinder v. Board of Supervisors, 146 So. 715, 718 (La. App. 1933); Kent County *ex rel.* Board of Supervisors v. Reed, 243 Mich. 120, 123, 219 N.W. 656, 657 (1928). There is no indication, however, that the differing language has resulted in differing constructions by the courts. For instance, the Indiana Supreme Court stated that "[w]hile the 'object' of an act may not be interchangeable with 'subject,' still we think the object of an act must be considered in determining whether matters embraced in the act may be reasonably treated as one 'subject.'" State *ex rel.* Test v. Steinwedel, 203 Ind. 457, 469, 180 N.E. 865, 868 (1932).

14. People *ex rel.* Chapman v. Sacramento Drainage Dist., 155 Cal. 373, 385, 103 P. 207, 213 (1909).

15. Ruud, *supra* note 4, at 391.

versally recognized purpose of the one-subject rule is to prevent log-rolling in the enactment of laws."[16] Virtually all of the forty-one jurisdictions report cases that identify logrolling—sometimes called "omnibus legislation"—as the evil to be remedied by the one-subject rule.[17]

A California appellate court recently reiterated the prevention of logrolling as the primary basis for the one-subject rule. In *Planned Parenthood Affiliates v. Swoap,*[18] the court identified two purposes behind the one-subject rule of the California Constitution, but emphasized the logrolling rationale:

> One of its functions "is to prevent legislators and the public from being entrapped by misleading titles to bills whereby legislation relating to one subject might be obtained under the title of another." But prevention of the passage of acts bearing misleading titles is not the principal purpose of the one-subject rule. As has been stated, "[t]he primary and universally recognized purpose . . . is to prevent logrolling in the enactment of laws . . . ."[19]

The *Swoap* court's emphasis on this aspect of the rule is especially appropriate in light of the rule's history. California's first constitution, ratified in 1849, included a one-subject rule.[20] Although the constitutional convention of 1849 adopted the measure without debate,[21] the delegates to the second constitutional convention, which occurred in 1878-79, did discuss the rule prior to including it in the new constitution.[22]

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16. *Id.*

17. *See, e.g.*, Department of Educ. v. Lewis, 416 So. 2d 455, 459 (Fla. 1982); Fuehrmeyer v. City of Chicago, 57 Ill. 2d 193, 201, 311 N.E.2d 116, 121 (1974); State *ex rel.* Dix v. Celeste, 11 Ohio St. 3d 141, 142, 464 N.E.2d 153, 155 (1984); Booth & Flinn, Ltd. v. Miller, 237 Pa. 297, 302, 85 A. 457, 458 (1912); Washington Toll Bridge Auth. v. State, 49 Wash. 2d 520, 525, 304 P.2d 676, 679 (1956).

18. 173 Cal. App. 3d 1187, 219 Cal. Rptr. 664 (1985).

19. *Id.* at 1196, 219 Cal. Rptr. at 669-70 (quoting Abeel v. Clark, 84 Cal. 226, 228, 24 P. 383, 383 (1890), and Ruud, *supra* note 4, at 391) (citations omitted).

20. In the constitution of 1849, the one-subject rule was embodied in article IV, § 25, which read:

> Every law enacted by the legislature, shall embrace but one object, and that shall be expressed in the title: and no law shall be revised, or amended, by reference to its title; but in such case, the act revised, or section amended shall be re-enacted and published at length.

CAL. CONST. art. IV, § 25 (1849).

21. J. ROSS BROWN, REPORT OF THE DEBATES IN THE CONVENTION OF CALIFORNIA, ON THE FORMATION OF THE STATE CONSTITUTION, IN SEPTEMBER AND OCTOBER, 1849, at 90 (1850).

22. 2 E.B. WILLIS & P.K. STOCKTON, DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF CALIFORNIA, IN SEPTEMBER, 1878, at 796-803 (1881). The language of the provision in the 1879 constitution differed from the earlier section and included an additional measure:

> Every Act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the

Delegates offered several rationales for the provision, but the prevention of logrolling was foremost among them. One delegate succinctly stated the rule's purpose: "I suppose everybody understands that the object of the provision is to prevent collusion in a legislative body; to prevent the passage of what are called omnibus bills—uniting various interests in order to get them passed."[23] Perhaps even more significant, however, was another delegate's recognition that this rule represented a rejection of the federal system. "[Logrolling] is the way legislation takes place in the Congress of the United States, and accounts for the vicious legislation which takes place there . . . . Now, if we should take this clause out altogether, it would open legislation here to the same rule."[24] This explicit repudiation of the federal approach to legislation suggests that the drafters of the one-subject rule aimed it not only at legislative collusion, but also at the evil of legislative circumvention of the gubernatorial veto.

This conclusion is reinforced by judicial decisions observing that riders, as well as logrolling, are a target of the one-subject rule.[25] Legislatures use riders not only to garner votes, but also as a weapon to preclude a veto of measures objectionable to the executive.[26] A number of jurisdictions have explicitly acknowledged that the prevention of "veto-proofing" is a central function of the prohibition on multiple subjects.[27] The Pennsylvania Supreme Court stated this point clearly early in this century:

> [B]y joining a number of different subjects in one bill the governor was put under compulsion to accept some enactments that he could not approve, or to defeat the whole, including others that he thought desir-

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act revised or section amended shall be re-enacted and published at length as revised or amended; and all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings, shall be conducted, preserved, and published in no other than the English language.

CAL. CONST. art. IV, § 24 (1879).

In 1966, the California Constitutional Revision Commission moved the rule to section 9 and changed it to its present form, deleting the last clause as "obsolete." CAL. CONSTITUTIONAL REVISION COMM'N, PROPOSED REVISION OF THE CALIFORNIA CONSTITUTION 34 (1966).

23. 2 E.B. WILLIS & P.K. STOCKTON, *supra* note 22, at 798.

24. *Id.*

25. *See, e.g., Ex parte* Hallawell, 155 Cal. 112, 99 P. 490 (1909); Davis v. State, 7 Md. 151 (1854); Kelly v. Williams, 346 S.W.2d 434 (Tex. Civ. App. 1961). Professor Ruud recognizes this function, yet dismisses it as "but a variation of logrolling." Ruud, *supra* note 4, at 391. However, some courts have defined "logrolling" as an attempt to veto-proof legislation. *See, e.g.,* Brown v. Firestone, 382 So. 2d 654, 663-64 (Fla. 1980).

26. "By far the most important function of riders . . . is the enhancement of Congress' bargaining position vis-à-vis the President, for the rider necessarily circumvents to some degree the President's veto power." Note, *Separation of Powers: Congressional Riders and the Veto Power,* 6 U. MICH. J.L. REF. 735, 740 (1973).

27. *See, e.g.,* Brown v. Firestone, 382 So. 2d 654, 663-64 (Fla. 1980); Green v. Rawls, 122 So. 2d 10, 13 (Fla. 1960); Turner v. Wright, 11 Ill. 2d 161, 172, 142 N.E.2d 84, 90 (1957); State *ex rel.* Wisconsin Tel. Co. v. Henry, 218 Wis. 302, 314, 260 N.W. 486, 492 (1935).

> able or even necessary. Such bills, popularly called "omnibus bills," became a crying evil . . . . Omnibus bills were done away with by the amendment of 1864 that no bill shall contain more than one subject, which shall be clearly expressed in the title.[28]

While California courts have yet to acknowledge the veto-proofing rationale explicitly, they do recognize that riders are a target of the one-subject rule.[29] Whether the legislative abuse to be remedied is termed "logrolling" or "riders," it is clear that protection of the governor's veto power is among the main purposes of the one-subject rule. Indeed, such protection is an obvious and significant benefit of the rule.

B. The Gubernatorial Veto Power

(1) The General Veto

At present, every state except North Carolina provides the governor with the power to disapprove legislation.[30] Quite the contrary was true, however, early in the history of the United States. British rule had instilled in the colonists a pervasive fear of executive power. Among the causes of the American Revolution was the veto power held and sometimes abused by both the colonial governors and the King.[31] Indeed, the first example of royal mistreatment of the colonies listed in the Declaration of Independence was the oppressive use of the veto:

> He [the King] has refused his Assent to Laws, the most wholesome and necessary for the public good.
>
> He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.[32]

Abuse of the veto power was not forgotten when the newly independent states began drafting constitutions.[33] Only two of the original thirteen states, New York and Massachusetts, included even a qualified veto power in their initial constitutions, adopted in 1777 and 1780, respectively.[34] By the time of the federal constitutional convention, how-

28. Commonwealth *ex rel.* Attorney General v. Barnett, 199 Pa. 161, 171-72, 48 A. 976, 977 (1901).

29. *E.g., Ex parte* Hallawell, 155 Cal. 112, 114, 99 P. 490, 492 (1909).

30. B. SACHS, LAWS, LEGISLATURE, LEGISLATIVE PROCEDURE: A FIFTY STATE INDEX 99 (1982). As of the writing of this Note, the Sachs index remained accurate.

31. E. MASON, THE VETO POWER 17-18 (1890); *see also* J. KALLENBACH, *supra* note 7, at 22.

32. The Declaration of Independence paras. 3-4 (U.S. 1776).

33. "Conflict between colonial assemblies and governors had brought into clear view certain elements of the executive power which it was thought necessary to restrict or to assign to the legislative branch. Above all, it had brought into disfavor the colonial governor's powers of prorogation, dissolution, and veto . . . ." J. KALLENBACH, *supra* note 7, at 11.

34. R. LUCE, PROBLEMS, *supra* note 2, at 145-49. South Carolina initially included an

ever, sentiment had changed.[35] Alexander Hamilton[36] and James Madison[37] championed the cause of increased executive power. This new perspective resulted in a qualified presidential veto power.[38]

Within a century, suspicion of the executive had been replaced by hostility toward the legislature.[39] "The transition from early state constitutions granting unfettered legislative power to the more recent constitutions restricting legislative power reflects one of the most important themes in state constitutional law."[40] With the decline in confidence in the legislature, executive power correspondingly increased. By 1812, nearly half the states had adopted a gubernatorial veto power; by 1860, twenty-two of thirty-three governors had the veto; and by 1900, these numbers had increased to forty-two of forty-three.[41]

In addition, since the late nineteenth century, states have steadily bolstered their governors' veto powers. Indeed, many governors now en-

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absolute veto power in its constitution, but abolished it only two years later. New York's veto was held by a multimember council. *Id.* at 145.

35. J. KALLENBACH, *supra* note 7, at 321.

36. THE FEDERALIST No. 73 (A. Hamilton).

37. *Id.* No. 48 (J. Madison).

38. U.S. CONST. art. I, § 7.

39. H. BLACK, THE RELATIONSHIP OF THE EXECUTIVE POWER TO LEGISLATION 151 (1919).

> The most portentous development in American political and constitutional history since 1865, is the change in the relations between the executive and legislative branches of government, the one making enormous gains in the direction of influence and actual power, the other suffering a corresponding decline in prestige and in its control over the processes of government.

Id. at 1.

40. Williams, *State Constitutional Law Processes*, 24 WM. & MARY L. REV. 169, 201 (1983). Williams asserts that two phenomena illustrate the trend toward increasing limitations on legislative power:

> (1) the insertion of specific "constitutional legislation" into state constitutional text, thereby supplanting legislative prerogatives and sometimes leading to a limitation on legislative alternatives through judicially discovered "negative implication"; and (2) the insertion into state constitutions of detailed procedural requirements that the legislature must follow in the enactment of statutory law.

Id. at 201-02 (footnotes omitted). Among the "procedural requirements" referred to by Williams is the one-subject rule. *Id.* at 203.

41. Prescott, *supra* note 7, at 97-99. The means by which the states accomplished this transition from a weak to a strong executive varied. Some constitutional provisions were changed by convention, some by initiative or referendum. Williams, *supra* note 40, at 205. States continue to revise their constitutions through these means, often establishing constitutional revision commissions before making changes. Grad, *The State Constitution: Its Function and Form for Our Time*, 54 VA. L. REV. 928, 928-29 (1968).

Professor Fairlie notes that no state conferred a veto power on its governor between 1793 and 1812, and he attributes this to the rise of the Jeffersonian Republicans, who did not support a strong executive. Since 1812, all new states but West Virginia have given their governors a veto. According to Fairlie, the reason for this change may be that Congress had given the territorial governors this power, and the states merely adopted the familiar territorial form of government. Fairlie, *supra* note 7, at 476-77.

joy stronger legislative disapproval capabilities than the President.[42] In some states, for example, a governor has more time than the President to consider legislation, and in a few cases the governor has the option of returning the bill with suggestions for amendments that the legislature must consider prior to repassage.[43] Nevertheless, the general rule remains that a governor must accept or reject a bill in its entirety.[44] If the governor attempts to disapprove a portion of a bill in violation of this rule, the veto has no effect, and the bill passes into law.[45]

(2) The Item Veto

The primary exception to the general rule, and it is a significant one, is the item veto. The item veto allows the governor to delete segments from appropriation bills. Beyond this, generalizations about the operation of this power are difficult because states vary considerably in both the constitutional language authorizing a partial veto and judicial interpretations of such provisions. However, a few observations can be made to illustrate the differing philosophies toward partial veto power.

The framers of the United States Constitution apparently gave little thought to enabling the executive to veto less than a whole bill, simply because in their experience bills were brief and straightforward.[46] By the time of the Civil War, however, logrolling and the use of riders in Congress demonstrated the need for an expanded disapproval power. Recognizing this need, the Confederacy included an item veto in its constitution.[47] The states also experienced veto-proofing measures and, after the Civil War, began incorporating partial veto provisions into their constitutions. Southern states were the first to adopt item vetoes, but the use of such vetoes had spread to many northern states by the early twentieth century. Notably, this trend corresponded closely with the increasing popularity of the one-subject rule.[48]

42. J. KALLENBACH, *supra* note 7, at 321-22.

43. *See id.* at 365; R. LUCE, PROBLEMS, *supra* note 2, at 168; Prescott, *supra* note 7, at 98. This latter variation is sometimes called an "amendatory veto." J. KALLENBACH, *supra* note 7, at 365. This divergence in the state experience from that of the federal system counsels against looking to federal decisions in evaluating the scope of the gubernatorial veto power.

44. *See, e.g.,* California Mfrs. Ass'n v. Public Utils. Comm'n, 24 Cal. 3d 836, 847, 598 P.2d 836, 843, 157 Cal. Rptr. 676, 683 (1979); Lukens v. Nye, 156 Cal. 498, 503, 105 P. 593, 595 (1909); Patterson v. Dempsey, 152 Conn. 431, 441, 207 A.2d 739, 744 (1965); Opinion of the Justices, 58 Del. 475, 479, 210 A.2d 852, 855 (1965); State *ex rel.* Turner v. Iowa State Highway Comm'n, 186 N.W.2d 141, 151 (Iowa 1971); Wood v. State Admin. Bd., 255 Mich. 220, 224, 238 N.W. 16, 17-18 (1931).

45. Black & White Taxicab Co. v. Standard Oil Co., 25 Ariz. 381, 218 P. 139 (1923); Lukens v. Nye, 156 Cal. 498, 105 P. 593 (1909).

46. R. LUCE, PROBLEMS, *supra* note 2, at 185; *see also* Zinn, *The Veto Power of the President,* 12 F.R.D. 209 (1951).

47. R. LUCE, PROBLEMS, *supra* note 2, at 185.

48. *Id.*

Today, forty-two states provide the governor with the option of striking portions of budget bills.[49] One state, Washington, does not limit the partial veto to appropriation acts, but allows the executive to delete separate sections from any bill.[50] Other states with item vetoes fall into two categories. The first restricts the veto to whole items of appropriation, and the second permits either a "reduction" in an appropriation or the deletion of "part" of an appropriation or bill.[51] Whatever differences exist concerning the scope of the item veto, the jurisdictions agree on the purpose of the item veto: like the one-subject rule, its purpose is to prevent riders and logrolling.[52]

II. Judicial Application

The one-subject rule and the item veto represent two sides of the same phenomenon: the replacement of fear of the executive branch with hostility toward the legislature. More specifically, both are designed to prevent legislative circumvention of the gubernatorial veto power by means of logrolling and riders. This section shows that any failure of these provisions to curb undesirable legislative practices is not due to shortcomings of the provisions themselves, but rather to judicial unwillingness to apply them with an eye toward furthering this fundamental purpose.

A. The One-Subject Rule

Litigants have repeatedly called upon the courts to decide just what constitutes a single "subject" within the meaning of the one-subject rule. In keeping with the tradition of judicial deference to the legislature, courts have given the word a very broad construction. While most challenges under the one-subject rule have therefore failed,[53] examples of decisions invalidating multisubject legislation are not difficult to find.[54]

49. Indiana, Maine, Missouri, Nevada, New Hampshire, North Carolina, Rhode Island, and Vermont have no item veto provision.

50. WASH. CONST. art. III, § 12 (1966); *see* State *ex rel.* Ruoff v. Rosellini, 55 Wash. 2d 554, 556, 348 P.2d 971, 972 (1960) (confirming that art. III, § 12 allows the veto of any section of a bill).

51. Harrington, *The Propriety of the Negative—The Governor's Partial Veto Authority*, 60 MARQ. L. REV. 865, 873-74 (1977).

52. Fairfield v. Foster, 25 Ariz. 146, 153, 214 P. 319, 322 (1923); Green v. Rawls, 122 So. 2d 10, 14 (Fla. 1960); Opinion of the Justices, 384 Mass. 820, 425 N.E.2d 750 (1981); State *ex rel.* Teachers & Officers v. Holder, 76 Miss. 158, 163, 23 So. 643, 647 (1898); State *ex rel.* Martin v. Zimmerman, 233 Wis. 442, 444-45, 289 N.W. 662, 664 (1940).

53. *See* Ruud, *supra* note 4, at 394.

54. *See, e.g.*, Planned Parenthood Affiliates v. Swoap, 173 Cal. App. 3d 1187, 1201, 219 Cal. Rptr. 664, 667 (1985); State v. Lee, 356 So. 2d 276 (Fla. 1978); AFL v. Langley, 66 Idaho 763, 168 P.2d 831 (1946); Michaels v. Hill, 328 Ill. 11, 159 N.E. 278 (1927); State *ex rel.* Stephan v. Carlin, 229 Kan. 665, 630 P.2d 709 (1981); Johnson v. Greiner, 44 N.M. 230, 101 P.2d 183 (1940); Barde v. State, 90 Wash. 2d 470, 584 P.2d 390 (1978). Indeed, the drafters of

Although the terminology differs slightly, nearly all courts apply some form of the "germaneness" test in determining whether a law contains multiple subjects: if all of the law's provisions are germane to one general subject or object, the legislation satisfies the one-subject rule.[55] Although courts have often applied this test permissively, finding its requirement satisfied by a very broad subject, the seminal California case of *Evans v. Superior Court*[56] suggested a limiting principle. In *Evans*, the challenged act completely revised California probate law and combined it in a single code. The measure contained 1700 sections dealing with all aspects of probate. In upholding the act, the court said:

> Numerous provisions, having one general object, if fairly indicated in the title, may be united in one act. Provisions governing projects so related and interdependent as to constitute a single scheme may be properly included within a single act. The legislature may insert in a single act all legislation germane to the general subject as expressed in its title and within the field of legislation suggested thereby.[57]

The *Evans* court's language concerning "interdependent" provisions is especially noteworthy. Requiring interdependence of provisions would give conceptual substance to the extremely slippery germaneness test by taking the analysis out of circular definitions of "subject." Justice Wiley Manuel, dissenting in *Schmitz v. Younger*,[58] argued for a test similar to the *Evans* interdependence approach for determining whether initiatives violate the one-subject rule.[59] Justice Manuel proposed that "provisions must be functionally related in furtherance of a common underlying purpose."[60] In *Amador Valley Joint Union High School District v. State Board of Equalization*,[61] the California Supreme Court acknowledged Justice Manuel's test, calling it "more restrictive" than the germaneness

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the Model State Constitution contend that the courts have used the one-subject rule as the basis for a series of "highly technical invalidations." *See infra* note 74 and accompanying text. *But see* Ruud, *supra* note 4, at 447 (courts only infrequently invalidate legislation as multisubject).

55. *See, e.g.*, Shaw v. State, 8 Ariz. App. 447, 452, 447 P.2d 262, 267 (1968); State v. Hruska, 219 Kan. 233, 243-44, 547 P.2d 732, 740-41 (1976); State *ex rel.* Dowling v. Sill, 310 Mich. 570, 574-75, 17 N.W.2d 756, 758 (1945); Barde v. State, 90 Wash. 2d 470, 472, 584 P.2d 390, 391 (1978).

56. 215 Cal. 58, 8 P.2d 467 (1932).

57. *Id.* at 62-63, 8 P.2d at 469 (citations omitted).

58. 21 Cal. 3d 90, 577 P.2d 652, 145 Cal. Rptr. 517 (1978).

59. The initiative one-subject rule was adopted in California in 1948. CAL. CONST. art. II, § 8(d). California courts have treated the initiative one-subject rule the same as the legislative one-subject rule. *See* Perry v. Jordan, 34 Cal. 2d 87, 207 P.2d 47 (1949). For a full discussion of the one-subject rule for initiatives, see Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 UCLA L. REV. 936 (1983).

60. *Schmitz*, 21 Cal. 3d at 100, 577 P.2d at 656, 145 Cal. Rptr. at 522-23 (Manuel, J., dissenting). Justice Manuel urged that "the special nature of the initiative process requires a narrower construction of the word 'subject.'" *Id.* at 99, 577 P.2d at 657, 145 Cal. Rptr. at 522.

61. 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978).

test, but avoided deciding whether it was controlling by finding that the measure under scrutiny satisfied both the "functionally related" and germaneness tests.[62]

In 1982, however, the California Supreme Court eliminated the interdependence aspect of the *Evans* test. In *Brosnahan v. Brown*,[63] Proposition 8 of the June 1982 primary election—popularly known as the "Victims' Bill of Rights"—was challenged as a violation of California's one-subject rule for initiatives.[64] Proposition 8 contained measures ranging from victim restitution[65] to changes in the rules of evidence.[66] The court rejected the argument that the different sections of the initiative were not "interdependent," stating that "[n]o preceding case has ever suggested that such interdependence is a constitutional prerequisite. . . . In context, it is obvious that *Evans*' reference to interdependence merely illustrated *one type* of multifaceted legislation which would meet the single subject test."[67] Thus, the *Brosnahan* court eliminated the core of the *Evans* test by characterizing it as simply an example of permissible legislation. The court justified this interpretation by pointing out that the *Evans* opinion provided that interdependent provisions *may* be joined in a single act.[68] This interpretation simply ignored the obvious implication of the *Evans* holding that provisions not interdependent may not be included in one bill.

In place of the *Evans* test, the *Brosnahan* court held that enactments will meet the one-subject requirement when they "fairly disclose a reasonable and common sense relationship among their various components in furtherance of a common purpose."[69] The court begged the question of when a "common purpose" is impermissibly broad, except to say that "the rule obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or 'public welfare.' "[70]

The *Brosnahan* test offers little guidance to legislators or litigators in

62. *Id.* at 230, 583 P.2d at 1290, 149 Cal. Rptr. at 248.

63. 32 Cal. 3d 236, 651 P.2d 274, 186 Cal. Rptr. 30 (1982).

64. *Id.* at 247, 651 P.2d at 280, 186 Cal. Rptr. at 36. Proposition 8 was a modification of the state constitution, rather than statutory legislation, but this distinction played no part in the court's analysis.

65. CAL. CONST. art. I, § 28(b).

66. *Id.* § 28(f).

67. *Brosnahan*, 32 Cal. 3d at 248-49, 651 P.2d at 281, 186 Cal. Rptr. at 37 (emphasis in original).

68. *Id.* at 248-50, 651 P.2d at 281, 186 Cal. Rptr. at 37.

69. *Id.* at 253, 651 P.2d at 284, 186 Cal. Rptr. at 40.

70. *Id.* In a vigorous dissent, Chief Justice Bird argued that the majority, in rejecting interdependence, had abruptly departed from precedent. *Id.* at 269-71, 651 P.2d at 294-95, 186 Cal. Rptr. at 50-51 (Bird, C.J., dissenting). She declined, however, to express an opinion on whether the initiative one-subject rule is more restrictive than the legislative one-subject rule. *Id.* at 271 n.8, 651 P.2d at 295 n.8, 186 Cal. Rptr. at 51 n.8.

assessing when the line between distinct subjects has been crossed. Few will be confident in predicting what constitutes a "common sense relationship" or when a subject is one of "excessive generality." Under the *Evans* interdependence test or Justice Manuel's proposed "functionally related" standard, legislation such as Proposition 8 would likely fail.[71] Although one might arguably characterize provisions concerning revised evidence rules and restitution to crime victims as promoting the same general object, they clearly operate independently. The effectiveness of one has nothing to do with the operation of the other.

The judiciary's liberal reading of the one-subject rule is understandable, if not necessarily effective. Courts are traditionally and justifiably hesitant to strike down legislation as unconstitutional. Moreover, they are quite right in giving the one-subject rule a practical reading that will not hamstring the legislature's attempts to enact legitimate though complex legislation. However, the courts' failure to articulate a clear, predictable standard under the one-subject rule has led at least one commentator to suggest that the requirement be eliminated.[72] Similarly, the Model State Constitution proposes that the rule be excluded from judicial review.[73] The drafters based this proposal on their belief that, in applying the one-subject rule, the courts have pursued a course of "highly technical invalidations."[74] The commentary to the Model State Constitution recognizes that, absent judicial review, the gubernatorial veto would become the primary means of enforcement:

> In effect, this means that the legislature will have to police the single subject rule in the first instance and, if abuses should occur, *then the governor's veto might be the proper remedy* in response to public pressure or on the basis of information received from the state legislature itself. The unavailability of judicial review may encourage mischief which would then have as its sole corrective the normal political processes *and a prompt governor's veto*.[75]

This proposal should be rejected for several reasons. First, the argument that the governor's existing veto power can effectively enforce the rule is unpersuasive, because it is precisely this all-or-nothing veto that frequently motivates violation of the rule. Crucial or desirable legislation is often difficult, if not politically impossible, to veto. As the importance,

71. *Evans,* 215 Cal. at 62-63, 8 P.2d at 469; *see Schmitz,* 21 Cal. 3d at 100, 577 P.2d at 658, 145 Cal. Rptr. at 523 (Manuel, J., dissenting) (standard would permit "complex but focused" legislation, while screening out an "amalgamation of unrelated provisions").

72. Schnader, *The Constitution and the Legislature,* 181 ANNALS 39, 41-42 (1935).

73. MODEL STATE CONST. art. IV, § 4.14 (1963). The final sentence of that section reads: "Legislative compliance with the requirements of this section is a constitutional responsibility not subject to judicial review." The section also omits the title requirement.

74. *Id.*, commentary at 60.

75. *Id.* (emphasis added). The commentary apparently assumes that the governor would have no choice but to disapprove the whole bill, rather than strike segments of it, but does not preclude the latter possibility.

urgency, or desirability of a bill increases, the likelihood that the legislature will attach riders to the bill in an effort to avoid the veto of less popular measures is similarly enhanced. Thus, in those cases in which the likelihood of violation is greatest, the governor is least likely to enforce the one-subject rule by disapproving an entire bill. In the absence of a subject-by-subject veto, the temptation to veto-proof measures increases, yet the governor remains without a remedy.

Second, the Model Constitution's premise that courts have engaged in a course of "highly technical invalidations" is inaccurate. As already noted, the judiciary generally accords legislatures wide latitude in drafting legislation.[76] In most of the cases considering the issue, the courts have found that the legislature complied with the one-subject rule.[77] Only the most egregious violations result in invalidations. In short, judicial invalidations under the one-subject rule have been neither frequent, at least in comparison to the number of challenges, nor "highly technical."

Finally, the Model Constitution's position that judicial review of the one-subject rule is inappropriate is essentially based on disagreement with the courts' treatment of the provision. By this reasoning, however, any constitutional provision that, in the drafters' opinion, the judiciary has not properly interpreted should be shielded from judicial review. Even the *Brosnahan* "common sense relationship" test, however, is better than no judicial review at all. By its very existence, judicial review is likely to deter the legislative practices that the one-subject rule seeks to prevent. "Normal political processes" obviously will not favor compliance with the rule, since the legislature has no incentive—indeed a disincentive—to comply.

B. The Item Veto

When a particular exercise of the item veto is challenged, the controversy typically centers on the two basic elements of an item of appropriation—the amount or money portion, and the instructions attached to the funding.[78] Can the executive strike one and leave the other? The answer depends in part on whether the relevant constitutional language permits only the veto of distinct items, or whether it permits reductions

76. *See supra* text accompanying notes 53-54.

77. Professor Ruud suggests that the judicial interpretation of the rule is so liberal that it has become a "weak and undependable arrow in [the advocate's] quiver." Ruud, *supra* note 4, at 447.

78. *See* Jessen Assoc. v. Bullock, 531 S.W.2d 593 (Tex. 1976). In California, the two elements are described as the amount and the subject. Wood v. Riley, 192 Cal. 293, 304, 219 P. 966, 971 (1923). This characterization is somewhat misleading, however, because what the *Wood* court called the "subject" often includes conditions or restrictions on the funding. *Id.* at 303-04, 219 P. at 972.

or the elimination of "parts" of bills. Ultimately, however, the judiciary determines the scope of the item veto.

(1) The Narrow Construction

The Iowa Supreme Court's decision in *Rush v. Ray*[79] is a recent example of the strict approach to the item veto. The case arose after the Iowa legislature enacted several appropriation measures and placed restrictions on the use of the money appropriated to prevent expenditures for purposes other than those specified. These restrictions were to operate independently of a separate section of the Iowa Code which allowed the governor to transfer appropriated funds from one state agency to another.[80] Governor Ray vetoed the restrictions, leaving the money provisions intact. The *Rush* court framed the issue as "whether use of the governor's item veto power to eliminate a provision in an appropriation bill which prohibits the expenditure or transfer of appropriated funds from one department of state government to another is proper."[81]

The majority purported to apply the "severability" test enunciated in the court's earlier decisions. The severability test requires that a veto be exercised only on an "item," defined as "something that may be taken out of a bill without affecting its other purposes and provisions. It is something that can be lifted bodily from it rather than cut out. No damage can be done to the surrounding legislative tissue, nor should any scar tissue result therefrom."[82] The majority interpreted this severability test to mean that "the governor's power is a negative one that does not allow him to legislate by striking qualifications in a manner which distorts legislative intent."[83] To strike a condition or restriction, said the court, the governor must also disapprove the appropriation. Accordingly, the court held that the language vetoed was an inseparable condition on the appropriated funds and that the governor had used his power "affirmatively to create funds not authorized by the legislature."[84] Thus, the Iowa Supreme Court invalidated the separate vetoes of an allocation of money and restrictions on its expenditure.

The *Rush* court's approach was a mechanical application of precedent. The language of the severability test is broad enough to allow the veto of provisions not containing monetary amounts. In fact, this broad language suggests a judicial concern over legislative incursions on the

79. 362 N.W.2d 479 (Iowa 1985). The relevant portion of the Iowa Constitution reads: "The governor may approve appropriation bills in whole or in part and may disapprove any item of an appropriation bill . . . ." IOWA CONST. art. III, § 16 (1857, amended 1968).

80. *Rush*, 362 N.W.2d at 483 (citing IOWA CODE ANN. § 8.39 (West Supp. 1986)).

81. *Id.* at 480.

82. *Id.* at 481 (quoting Commonwealth v. Dodson, 176 Va. 281, 290, 11 S.E.2d 120, 124 (1940)).

83. *Id.* at 482.

84. *Id.*

gubernatorial general veto power through the use of amendments to appropriation bills. By phrasing the test in general terms—terms applicable outside the context of appropriation legislation—the Iowa courts described an item veto with a scope broad enough, at least potentially, to disapprove legislation not containing an allocation of funds. If a provision were sufficiently distinct from other provisions in the bill, it would be subject to veto whether or not it could be properly characterized as an appropriation. In other words, the test authorized the governor to thwart legislative efforts to append substantive legislation to appropriation bills.[85]

The *Rush* court, however, effectively held that virtually any measure framed as a restriction on appropriated funds is inextricably linked to those funds. Instead of inquiring whether the restriction constituted general legislation attached to a budget bill, the *Rush* majority focused on whether the governor had "distorted" the legislative intent.[86] Such an approach is disingenuous. Clearly, any exercise of the item veto is, to an extent, a distortion of legislative intent. Even under a restrictive standard, the governor need not disapprove the whole appropriation act, and the final product may bear little resemblance to the document delivered to the governor's desk by the legislature.

The three dissenting justices pointed out that the line between an "item," which is subject to veto, and a "proviso or condition," which is not, is indistinct, but that regardless of how blurred the line may be, it is crossed when the language in question is so unrelated to the rest of the bill that it violates the one-subject rule.[87] In addition, the dissent recognized the practical nature of the problem:

> If a provision is attached to an appropriation in violation of the single subject provision the whole act could be challenged as void. But a governor is usually in a poor position to ask for an appropriation bill to be declared void . . . . Legislation attached by means of proviso or condition labels to crucial appropriation bills might thus become impervious to veto. The upshot was a liberal interpretation of an item . . . .[88]

The *Rush* dissent placed the focus in the appropriate place: the separation of powers. It recognized that, while the technical issue was whether the governor had validly exercised the item veto, the true dispute concerned the power of the legislature to neutralize the governor's general veto. Since a separate statute gave the governor the authority to transfer funds within the government, and a separate bill attempting to withdraw that authority would be subject to executive veto, the dissent-

85. Conceptually, the severability test is strikingly similar to the *Evans* interdependence test. *See supra* text accompanying notes 56-62. Both tests focus the inquiry on whether the various provisions included in a bill are interrelated.

86. *Rush*, 362 N.W.2d at 482.

87. *Id.* at 484 (Harris, J., dissenting).

88. *Id.* (Harris, J., dissenting) (citation omitted).

ers believed that "the governor should not be robbed of this veto power by the simple process of attaching the repeal or suspension of this existing statute to an appropriation bill."[89] The dissent thus highlighted two fundamental aspects of the dispute over whether courts should read the partial veto power broadly or narrowly. First, there is no easy way to define an item as opposed to an inseparable condition. Second, as a practical matter, the one-subject rule does not protect the governor's veto. Nevertheless, the dissent emphasized the relationship between the veto and the one-subject rule and observed that the one-subject rule can assist courts in determining whether a veto is valid.

(2) The Broad Construction

Only months after *Rush,* the Iowa Supreme Court appeared to adopt the dissenters' point of view, offering an example of an expansive reading of the veto power. In *Colton v. Branstad,*[90] the court again addressed the question of whether the separate veto of a restriction on certain appropriated funds was valid. The legislature had appropriated over one million dollars to a state agency, but conditioned the money on relinquishment of that agency's federal funding to specified local organizations. The governor vetoed the condition, but left the money provision intact.

Chief Justice Reynoldson, who had joined the dissent in *Rush,* wrote the majority opinion upholding the veto. The Chief Justice attempted to reconcile the decision with *Rush,* finding the veto valid because the provision at issue, unlike that in *Rush,* did not "limit or direct the use of the appropriation."[91] In other words, the qualification on the funds did not specify how they should be spent, but rather created a prerequisite for their expenditure. Instead of a condition, which could not be vetoed under *Rush,* the provision was a "contingency," which was subject to veto because it had no "direct or immediate relationship" to the purpose of the funds.[92] The attenuated connection between the money and the contingency permitted independent veto of each. Chief Justice Reynoldson established a "sufficient relationship" test to determine the validity of an exercise of the item veto. Under this test, if the court finds that the vetoed measure is an "unrelated substantive piece of legislation"—that is, a rider—it will uphold the veto.[93] Thus, a provision may be vetoed be-

89. *Id.* at 485 (Harris, J., dissenting).

90. 372 N.W.2d 184 (Iowa 1985).

91. *Id.* at 189.

92. *Id.* at 190.

93. *Id.* at 191-92. At the end of the opinion, the court noted that the tests for determining whether a provision may be item-vetoed and whether it meets the requirements of the one-subject rule are not the same. A bill may contain only one subject, yet some of its provisions may be sufficiently unrelated to the rest of the act to be subject to the item veto. "It seems apparent that the item veto amendment, adopted 111 years after the 'one bill-one subject'

cause it is general rather than appropriation legislation. Accordingly, the governor may separately veto funding restrictions if those restrictions are sufficiently unrelated to the purpose of the funding itself.

Colton was an improvement over *Rush* to the extent that the holding prevented the legislature's use of an appropriation bill as a vehicle for general legislation. But, the court's effort to reconcile its opinion with *Rush* weakened the holding. This hedging forced the court to create a dubious distinction between "conditions" and "contingencies," adding an element of confusion to the decision.

The Louisiana Supreme Court has been more straightforward in explaining its broad view of the item veto. In *Henry v. Edwards,*[94] which was quoted at length in *Colton,*[95] the court read the state's item-veto provision in conjunction with a corollary to the one-subject rule, common among the states,[96] prohibiting the inclusion of general legislation in appropriation bills.[97] Although the court defined an item as a "sum of money dedicated to a specific purpose,"[98] it nevertheless permitted the governor's veto of segments that did not include sums of money. The executive cannot disapprove "conditions or limitations *legitimately* included in an appropriation bill" without deleting the money allocation attached to those conditions or limitations.[99] However, if the legislature attempts to "veto-proof" general legislation by phrasing it as a condition to an appropriation, violating the state constitution in the process, the governor may properly excise this "condition." Such a rule is necessary, said the court, to preserve the proper balance between the legislative and executive branches:

> Just as the Governor may not use his item-veto power to usurp constitutional powers conferred on the legislature, neither can the legislature deprive the Governor of the constitutional powers conferred on him as the chief executive officer of the state by including in a general appropriation bill matters more properly enacted in separate legislation. The Governor's constitutional power to veto bills of general legislation cannot be abridged by the careful placement of such measures in a general appropriation bill, thereby forcing the Governor to

constitutional provision, was designed to achieve a goal that could not be reached through the prior provision." *Id.* at 192. This conclusion seems correct, but it does not affect the point made in the *Rush* dissent that the one-subject rule may offer assistance in determining when a veto is valid.

94. 346 So. 2d 153 (La. 1977).

95. 372 N.W.2d at 190-91.

96. *E.g.*, ARIZ. CONST. art. IV, pt. 2, § 20; COLO. CONST. art. V, § 32; ILL. CONST. art. IV, § 8(d). Normally these provisions are used by states that exempt budget bills from the one-subject rule.

97. "The general appropriation bill shall be itemized and shall contain only appropriations for the ordinary expenses of government, public charities, pensions, and the public debt or interest thereon." LA. CONST. art. III, § 16(C).

98. *Henry,* 346 So. 2d at 157.

99. *Id.* (emphasis added).

> choose between approving unacceptable substantive legislation or vetoing "items" of expenditure essential to the operation of government .... In order to avoid this result, *we hold that, when the legislature inserts inappropriate provisions in a general appropriation bill, such provisions must be treated as "items" for purposes of the Governor's item veto power over general appropriation bills.*
>
> ... [L]egislative control cannot be exercised in such a manner as to encumber the general appropriation bill with veto-proof "logrolling measures," special interest provisions which could not succeed if separately enacted, or "riders," substantive pieces of legislation incorporated in a bill to insure passage without veto.[100]

Two premises are implicit in the *Henry* opinion. First, the mere existence of a prohibition on attaching general legislation to an appropriation bill does not prevent the legislature from engaging in that practice. Were this not true, the litigation would not have arisen; the governor could have exercised the item veto as envisioned by the authors of the one-subject rule. Second, the initial method of enforcing the ban on the inclusion of substantive legislation in appropriation bills should be the gubernatorial veto power.

The *Henry* court explicitly recognized that both the item veto and the rules restricting the content of legislation represent efforts to curb logrolling and riders. Therefore, the court applied the same test to each: a measure violating the *spirit* of the one-subject rule is vulnerable to the governor's veto. Despite the court's reliance on the item veto, it plainly was protecting the governor's *general* veto power.

The dissent disagreed with the majority's use of the constitutional restriction on appropriation bills to protect the governor's veto power. Admitting that the decision might strike a "workable compromise of a troublesome conflict between our co-equal branches of government,"[101] the dissenting justice nevertheless believed that the court had altered the balance between the chief executive and legislature without the people's consent. He further suggested that the court had surrendered to the governor its function of declaring legislation unconstitutional.[102]

California's judiciary has also enhanced the general veto through an expansive reading of the item veto.[103] The comparatively broad scope of the California governor's power to disapprove items of appropriation was established in two early cases. *Wood v. Riley*[104] and *Reardon v. Riley*[105]

100. *Id.* at 157-58 (emphasis added) (footnote omitted).

101. *Id.* at 166 (Dennis, J., concurring and dissenting).

102. *Id.*

103. California's constitution allows the reduction as well as deletion of items of appropriation: "The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill ...." CAL. CONST. art. IV, § 10(b).

104. 192 Cal. 293, 219 P. 966 (1923).

105. 10 Cal. 2d 531, 76 P.2d 101 (1938).

each upheld the exercise of the item veto even though the governor did not delete all of the funding corresponding to the vetoed instructions.

Wood involved the familiar pattern of the attachment of a substantive restriction[106] to an item of appropriation, followed by the governor's veto of that restriction. The legislature had conditioned its appropriation of funds for state teachers' colleges on the "administrative allotment" of one percent of those funds to the State Department of Education. The governor vetoed the restriction, but did not reduce the appropriation.[107]

After reviewing other state courts' interpretations of the item veto power,[108] the *Wood* court found that the restriction was in fact an appropriation subject to executive disapproval. The court reasoned that, because the governor did not recommend a Department of Education appropriation or include one in his proposed budget bill, the legislature enacted such an appropriation "under the guise of an administrative allotment,"[109] apparently to prevent the governor's elimination of that measure. According to the court, invalidating the veto would allow the legislature to accomplish indirectly what it was prohibited from doing directly.[110] Evidently this remark referred to the veto-proofing of legislation. What makes the case significant, however, is the court's failure to require a one percent reduction in the overall appropriation.[111] The legislature had disguised an item of appropriation as an allotment, yet the governor was permitted to veto the purpose of the funding without eliminating the funding itself.[112]

The facts in *Reardon* were very similar to those in *Wood*, and the court reached the same conclusion. The legislature had appropriated over $1.6 million to the Department of Industrial Relations, with special instructions for the expenditure of $348,000 of that amount. The governor vetoed the two "items" directing the use of the $348,000 subappropriation, but he reduced the overall appropriation by only $228,000.[113]

The state controller refused to release the $120,000 difference. He

106. The court called the restriction a "proviso." *Wood,* 192 Cal. at 296, 219 P. at 968.

107. *Id.* at 306, 219 P. at 972.

108. One case is particularly worthy of note. Callaghan v. Boyce, 17 Ariz. 433, 458, 153 P. 773, 782 (1915), stated that " 'item' . . . is used synonymously with 'subject.' "

109. *Wood,* 192 Cal. at 305, 219 P. at 971.

110. *Id.*

111. *Id.* at 306, 219 P. at 972.

112. In response to the petitioner's argument that the governor's veto of the restriction required a one percent reduction in the overall appropriation, the court said:

> What may or may not have been the effect of the Governor's veto of the appropriation made by the proviso on other portions of the act does not concern the court at this time. The point of this decision is that the legislature attempted to make an appropriation . . . in such a way as to circumvent the veto power of the Governor.

Id.

113. *Reardon,* 10 Cal. 2d at 533-34, 76 P.2d at 102.

argued that, by striking the provisions allocating $348,000, the governor effectively reduced the funds appropriated to the Department of Industrial Relations by the same amount.[114] Citing *Wood,* the court rejected the controller's argument and permitted the governor's veto to stand as it was originally exercised.[115] Again, the court allowed the governor to disapprove the instructions attached to funding separately from the money actually appropriated.

Unlike *Wood, Colton,* and *Henry,* however, *Reardon* was not based on the premise that the legislature cannot curtail the governor's general veto power by means of artfully drafted legislation. Rather, the court based its holding on its characterization of "legislative intent." "[W]e conclude that it was the original legislative intent to appropriate $1,625,185 to the department regardless of the subsequent fate of the specific and included items of further appropriation . . . ."[116] Thus, the court used a rationale most often associated with restrictive readings of the item-veto power to justify an expansive view of that executive prerogative. The fallacy of this reasoning has already been pointed out.[117]

Thirty-eight years have passed since the California Supreme Court last examined the scope of the gubernatorial veto power in *Reardon.* However, the court will have the opportunity to address the issue again during its current term in *Harbor v. Deukmejian.*[118] In *Harbor,* the intermediate appellate court upheld the governor's veto of a part of a *nonappropriation* bill, and the supreme court has granted review. The case arose after the legislature had passed a budget bill containing an appropriation of over $1.5 billion for the Aid to Families with Dependent Children program (AFDC). In section 45.5 of a separately enacted "budget implementation bill," the legislature changed the starting date for AFDC payments from the date of eligibility to the date of application. The Assembly-Senate Conference Committee estimated the cost of the change at $9,776,000. Governor Deukmejian reduced the overall AFDC appropriation by this amount and vetoed section 45.5 of the budget implementation bill.

Petitioner Harbor, an AFDC applicant, did not question the governor's ability to reduce the AFDC appropriation. Petitioner did, however, argue that the governor could not properly veto part of the budget implementation bill. In its amicus brief, the California Legislature maintained that the bill contained no items of appropriation and therefore

114. *Id.* at 535, 76 P.2d at 103.

115. *Id.* at 537, 76 P.2d at 104.

116. *Id.* at 536, 76 P.2d at 103.

117. *See supra* text accompanying notes 86-88.

118. 176 Cal. App. 3d 813, 222 Cal. Rptr. 382, *review granted,* Apr. 3, 1986 (S.F. 24837), *reprinted without change to permit tracking pending review,* 185 Cal. App. 3d 299 (1986). For a discussion of the significance of California's depublication procedure, see Grodin, *The Depublication Practice of the California Supreme Court,* 75 CALIF. L. REV. 514 (1984).

could be vetoed only in its entirety.[119] Respondent Deukmejian contended that his veto was valid "either as an 'item veto' of an appropriation or as a remedy for the Legislature's violation of the 'one subject' rule."[120] The court upheld the validity of the governor's action as a proper exercise of the item veto and therefore declined to address the one-subject issue.[121]

The court first reviewed *Wood* and *Reardon*, but noted that the *Harbor* facts differed from those earlier cases in two respects. In *Harbor*, "(1) subject and amount are in two different bills, and (2) the budget bill does not contain a line item appropriation for the subject vetoed."[122] The court deemed the first distinction "of minor importance. It cannot be argued seriously that the Legislature could negate the item veto by merely separating amount from subject and demanding an all-or-nothing veto of the bill containing the statement of the subject."[123]

The second distinction presented more difficulty. The item contained in the budget bill appeared to be discrete. It contained both elements of an item of appropriation: the amount was $1.5 billion and the instructions were to spend the money on AFDC. By reducing the amount and striking the substantive change in the AFDC program contained in a separate bill, the governor "purported to divide the appropriation into smaller amounts and identify the subject matter of one such smaller amount." The *Harbor* court candidly acknowledged that it "found no precedent authorizing his dividing that amount into its component parts and using the line item veto to eliminate discrete activities financed under the AFDC lump sum appropriation." Yet the court permitted this use of the item veto, emphasizing that when the legislature enacted section 45.5 of the budget implementation bill, it "left clear evidence of how much it expected those adjustments to cost."[124] In effect, the court allowed the governor to imply an item not created by the legislature.[125] Once the item was implied, it could be vetoed.

The reasoning of the *Harbor* opinion suffers from two defects. First, section 45.5 of the budget implementation act was not part of an appropriation. It was clearly substantive legislation because it did not merely provide instructions for the expenditure of money but conferred a statu-

119. Brief of Legislature, Amicus Curiae, in Support of Petitioners at 5, 9, *Harbor* (No. 24837).

120. *Harbor*, 185 Cal. App. 3d at 300, 222 Cal. Rptr. at 383.

121. *Id.* at 305 n.3, 222 Cal. Rptr. at 387 n.3. The budget implementation bill in fact contained provisions concerning subjects ranging from the escheat of property to the administration of tuberculosis tests to the reallocation of space within the State Capitol Building. S.B. 1379, 68th Leg., 2d Sess. (1984).

122. *Harbor*, 185 Cal. App. 3d at 304, 222 Cal. Rptr. at 386.

123. *Id.* at 304-05, 222 Cal. Rptr. at 386 (footnote omitted).

124. *Id.*

125. "Change in the beginning date of aid was the subject, and $9,776,000 was the amount . . . ." *Id.*

tory entitlement on certain needy families. The change in the AFDC starting date was a policy judgment not necessarily dependent on how much funding was appropriated to the program in general.[126] Undoubtedly the legislature could have enacted section 45.5—or changed any other aspect of the AFDC program—in a bill entirely unconnected with the budget act.

The second—and more significant—defect in the *Harbor* opinion is that it provides virtually no guidance for determining what future circumstances will justify the partial veto of a nonappropriation bill. By relying on the legislature's cost estimate in section 45.5, the court may have been limiting the decision to its facts, but it does not explain its reasons for doing so. The dissent pointed out several important questions left open by this reliance on the legislative estimate:

> Does this mean the Governor may veto substantive legislation *only* when the Legislature has expressly stated the cost of legislation? What may a Governor do the next time if the Legislature only leaves hints about the cost of the program? Or the time after that if no hints are left but a Governor's staff is able to estimate the cost of the legislative change?[127]

If the case is limited to those situations in which the legislature is explicit about how much the legislation will cost, a legislature intent on circumventing the veto power will certainly be careful to leave no such evidence. If it is not limited to those situations, the governor's power to partially veto substantive legislation has no identifiable limitation.

The court may have wanted to limit this use of the veto to the budget implementation bill: "We conclude that the budget bill and the budget implementation bill are so intimately related that when the Governor vetoes a part of the latter to conform with a reduction in the former, he or she vetoes an 'item of appropriation.' "[128] As a limitation, however, this statement cuts both ways. Although it may provide a check on the item veto, the conclusion that the two bills are "intimately related" would seem to allow the governor to veto virtually any portion

126. The new starting date increased the cost of the AFDC program, but the legislature was under no obligation to increase funding proportionately. If the funds proved insufficient, the result would simply be a cessation or reduction of payments actually made, or a later increase in appropriation. No constitutional provision requires the legislature to find funds for every cost-increasing piece of legislation it enacts.

In this respect, the *Harbor* court's reliance on the governor's reduction in the overall AFDC appropriation gave an arbitrary preference to the veto of cost-increasing substantive legislation. For example, suppose the legislature had passed a bill without reference to the budget act that made AFDC eligibility requirements more restrictive, reducing the cost of the program. If the governor vetoed this cost-reducing legislation, he would have no authority to add funding to the AFDC appropriation in the budget act, since the item veto can only be exercised to "reduce or eliminate" expenditures. CAL. CONST. art IV, § 10(b).

127. *Harbor*, 185 Cal. App. 3d at 306, 222 Cal. Rptr. at 387-88 (White, P.J., dissenting) (emphasis in original).

128. *Id.* at 305, 222 Cal. Rptr. at 387.

of the budget implementation bill, no matter how unrelated the provision may be to the budget bill. On the other hand, the legislature could protect such a provision simply by placing it in another bill.[129]

(3) Shortcomings of Judicial Application of the Item Veto

The literal interpretation of the item veto power in cases such as *Rush v. Ray*[130] admittedly is more persuasive than the broader construction of similar constitutional provisions. The phrase "item of appropriation" certainly connotes an allocation of money, not simply the preconditions to spending the money. In this sense, the broad interpretation of the item veto seems strained. For instance, *Henry v. Edwards* first defined an item as a "sum of money dedicated to a specific purpose,"[131] then allowed the veto of provisions not containing sums of money. Another example is *Harbor v. Deukmejian,*[132] in which the court strained but failed to provide a convincing rationale for the use of the item veto on substantive legislation contained in a nonappropriation bill.

Despite the questionable reasoning of the broad construction cases, the decisions nevertheless seem correct in the sense that they represent barriers against legislative incursions on executive power.[133] These cases seem both strained yet correct because, as the *Henry* court expressly noted, they often use the item veto to protect the governor's power to veto *general* legislation.[134]

Use of the item-veto rationale weakens the effort to preserve the general veto in two respects. First, the strained reasoning saps the persuasive power of the opinions. Second, and more important, protection for the general veto is arbitrarily limited to the extent the item veto may be exercised only on appropriation acts—or, in the *Harbor* case, budget implementation bills. The legislature may still accomplish its impermissible aim simply by attaching a rider to legislation unrelated to appropriations.

129. A further question left open by *Harbor* is how it relates to earlier cases. In *Wood* and *Reardon,* the governor was permitted to veto separately the instructions element of the item. Does that mean the governor might veto a section of the budget implementation bill without deleting any of the corresponding funding?

130. 362 N.W.2d 479 (Iowa 1985); *see supra* notes 79-89 and accompanying text.

131. 346 So. 2d 153, 157 (La. 1977); *see id.* at 165 (Dennis, J., concurring and dissenting); *supra* notes 94-102 and accompanying text.

132. 176 Cal. App. 3d 813, 222 Cal. Rptr. 382, *review granted,* Apr. 3, 1986 (S.F. 24837), *reprinted without change to permit tracking pending review,* 185 Cal. App. 3d 299 (1986); *see supra* notes 118-29 and accompanying text.

133. This aspect of the broad construction cases seems especially appropriate in light of the continuing trend in the states to bolster executive power while limiting that of the legislature. *See supra* text accompanying notes 39-43.

134. *Henry,* 346 So. 2d at 157-58.

III. Proposal: The Subject Veto

To preserve the positive aspects of the broad construction of the item veto and to better effect the purposes of the one-subject rule, this Note proposes that the judiciary recognize a governor's power to exercise a "subject veto" as a means of enforcing the constitutional restrictions on the legislature. The subject veto would empower the governor to disapprove separately any "nongermane" portions of a bill.[135] Whatever test the courts use to determine whether a bill contains only a single subject would also determine whether the governor may exercise a "subject veto." When a bill embraces several subjects, the governor would strike as many or as few of those subjects as he or she chooses. The veto would not extend to fragments of subjects, because this would be inconsistent with the purpose of the one-subject rule. It therefore would not permit deletion of individual words or phrases.[136] The rule is not intended to provide the governor with an unlimited partial veto power. It is, however, intended to stop veto-proofing, which the present system of exclusively judicial enforcement is inadequate to prevent.

There are two primary reasons for the inadequacy of the present system. First, the governor must make the crucial decision of whether to sign or veto an enactment long before a court may hear a challenge. As noted by the dissent in *Rush v. Ray,* the "governor is usually in a poor position to ask for an appropriation bill to be declared void."[137] The remark refers to appropriation bills, but it applies equally well to other legislation. In most states, the governor has between three and fifteen days to make a decision on a bill, and there simply is not enough time to litigate a case prior to the deadline for gubernatorial action.[138] Consequently, the legislature has that much more motivation to draft omnibus legislation. If the governor vetoes the enactment, little is lost; the legislature may redraft it without the objectionable provisions, or divide it into several bills. If the governor signs the bill, it might not be challenged. If the bill is challenged, the courts may simply defer to the legislature.

The subject veto would resolve the dilemma presently posed for governors considering whether to sign or veto an omnibus bill. A trip to the

135. Several commentators have argued that the President of the United States should have exactly this type of veto power. *See* Clineburg, *The Presidential Veto Power,* 18 S.C.L. REV. 732 (1962); Givens, *The Validity of a Separate Veto of Nongermane Riders to Legislation,* 39 TEMP. L.Q. 60 (1965); Note, *supra* note 2. *But cf.* Note, *supra* note 26, at 735. The weakness of this contention is that the federal government has accepted the system of logrolling and riders. It has neither a one-subject rule nor an item veto.

136. Thus, the subject veto, like the item veto, would not be vulnerable to the frequently quoted concern expressed in State v. Holder, 23 So. 643, 645 (Miss. 1898), that the governor's veto must be limited to "a qualified and destructive legislative function, and [can] never [be] a creative legislative power."

137. 362 N.W.2d 479, 484 (Iowa 1985) (Harris, J., dissenting).

138. *See* Prescott, *supra* note 7, at 99.

courthouse would no longer be necessary to remedy the situation, because the problem could be solved with the governor's pen. One of the evils at which the one-subject rule is aimed—veto-proofing—would be eliminated.

The second problem with purely judicial enforcement of the single subject rule is inefficiency. The governor, for political reasons or otherwise, may not have the incentive to challenge every bill believed to contain multiple subjects. Others with an interest in the legislation may not have the resources to pursue litigation. Also, any potential litigants are faced with the courts' ambiguous rulings concerning the definition of a "subject," which make the results of litigation highly unpredictable. Undoubtedly, for all these reasons, many marginally multisubject enactments are never brought to the judiciary's attention. In these cases, it is as if the one-subject rule did not exist.

Gubernatorial enforcement of the one-subject rule would increase efficiency in two ways. Instead of occasional, almost random, judicial scrutiny of a few bills several years after their enactment, *every* piece of legislation would be *immediately* evaluated for compliance with the rule. In turn, the legislature, faced with little prospect for success, would be much less likely to test the limits of the rule. The appeal of logrolling and riders would be greatly diminished, because the legislature could no longer be confident that omnibus legislation would go unchallenged.

One of the primary potential objections to a subject veto is the prospect of gubernatorial abuse. Just as the legislative branch has not always abided by the one-subject rule, the governor may well carve up a perfectly valid, unified enactment, invoking the subject veto as legal authority. The short answer to this objection is that the judicial safety net remains. No reason exists to believe that the governor will be more or less inclined than the legislature to overstep the bounds of his or her power. At present, when violations occur, the remedy lies in the courts. The subject veto would not change this remedy; rather, it would only shift the burden of litigating onto the legislature, or those who agree with its actions. Although such a shift may at first glance seem arbitrary, it is justified because the one-subject rule was intended as a burden on the legislature. It was designed as a restriction on that body's power and, simultaneously, as an enhancement of executive power.

In addition, the experience of the item veto provides some assurance that gubernatorial abuse is unlikely to be a serious problem. As the item veto cases indicate, the primary problem with respect to the item veto has been less a matter of gubernatorial abuse than legislative circumvention of the general veto.

Another possible objection to the subject veto is that voiced in the *Henry v. Edwards* dissent. The dissent asserted that allowing the governor to assess whether a constitutional restriction on legislative power was

violated amounted to the delegation of a uniquely judicial function to the executive.[139] This contention is without merit because the governor's veto is subject to judicial review. Moreover, the governor has always been permitted to disapprove legislation because of a belief that it is unconstitutional.[140]

A third objection might be that the governor is unlikely to veto subjects within a bill *because* it violates the one-subject rule. In other words, if a bill containing five subjects comes before the governor, he or she may well veto only one or two of those subjects, or none at all. Thus, despite the subject veto a multisubject bill passes into law.

This objection amounts to a criticism already directed at judicial enforcement of the one-subject rule: inefficiency. Admittedly, the existence of a subject veto power does not ensure that every multisubject bill will die on the governor's desk. But the primary value of such a veto lies in its deterrent effect. It removes a powerful incentive to draft multisubject legislation, namely, veto-proofing.

What legal rationale can be offered in support of the subject veto? One theory, proposed by at least three commentators addressing the presidential veto,[141] contends that a "bill" and a "subject" are identical. Under this theory, omnibus legislation would contain as many "bills" as "subjects." Therefore, the requirement that the executive veto only an entire bill would not prevent the deletion of several "bills" from an instrument containing more than one subject. This view has a certain appeal in the federal context, because it is supported by the likelihood that the framers of the United States Constitution did not anticipate that multiple subjects would be joined in a single enactment.[142] Thus it is plausible that, to them, a bill and a subject were identical. In the states, a supporting argument might be constructed from cases such as *Wood* and *Reardon,* in which the court refused to accept the legislature's definition

139. 346 So. 2d 153, 166 (La. 1977) (Dennis, J., concurring and dissenting).

140. "The main purpose of the veto power as first established in this country after the Revolution seems to have been to enable the executive to prevent action by the legislature in violation of the constitution." Fairlie, *supra* note 7, at 491. One author contends that the issue is unsettled, at least in the federal context. *See* Zinn, *supra* note 46, at 230-31.

141. *See* Clineburg, *supra* note 135, at 753; Givens, *supra* note 135 at 63; Zinn, *supra* note 46, at 241. Unlike Clineburg and Givens, Zinn recommends that Congress, rather than the judiciary, declare that a bill and a subject are identical:

> Such a definition would seem to be entirely in keeping with the intentions of the founding fathers in establishing the veto power. The absence of such a definition permits the Congress to circumvent the power which the Constitution provided for him. If by their legislative action in incorporating several subject matters in one instrument designated "a bill" the Congress may defeat or curtail the constitutional power, surely by legislative action defining the term it may be preserved.

Id. Not surprisingly, Congress has declined to follow Zinn's advice.

142. *See supra* note 46 and accompanying text.

of an "item."[143] Similarly, the courts might reject the legislative definition of a bill and redefine it as a subject.

This contention is fatally flawed, however, at least in the forty-one states that have adopted the one-subject rule, because it would strip the rule of all meaning. By definition, no bill could contain multiple subjects. The fears of the dissenting justice in *Henry* would be realized—the judiciary could not conduct an independent review of legislation challenged as multisubject. In those instances when both the legislature and the governor find that multisubject legislation promotes their interests, other parties who might object to the joining of unrelated provisions would have no recourse. The veto would become the *only* remedy for omnibus legislation. Once a law was signed by the governor, it would be impervious to this type of attack.

Of course, one might attempt to rehabilitate this theory by asserting that the words "bill" or "statute," as they are used in the one-subject rule, have two meanings. In the context of the gubernatorial veto, they are synonymous with the word "subject." In the context of litigation challenging compliance with the rule, they refer to a topic or idea. By this tortured, dual construction of one word in a single provision, the courts could simultaneously create a subject veto without eliminating their own independent power to hear challenges to multisubject legislation. Precisely because this approach is so strained, however, it seems disingenuous and unsatisfying.

A more appropriate and straightforward rationale for a subject veto would not rely on semantics, but rather would rest on an interpretation of the one-subject rule as it was intended to function in the context of the states' overall legislative scheme. Obviously, an attempt to "find" a subject veto within the words of the one-subject rule would require judicial sleight-of-hand just as clumsy as that displayed by the rationale equating "bill" with "subject." None of the various formulations of the one-subject rule could justify implementation of a subject veto on the basis of language alone. Instead, judicial implication of a subject veto should rest on the history and purposes of the one-subject rule.

The history of the rule reveals that it is part of a deliberate shift in the constitutional relationship between the legislative and executive branches of government. It reflects an explicit rejection of the federal system. Specifically, the one-subject rule represents an effort to allow the executive to make a subject-by-subject assessment of whether enactments should become law. While the rule is directed at the legislature, it provides a very precise perspective on the general veto power.

Several of the item-veto cases have recognized the close connection between the purposes of the one-subject rule and the gubernatorial veto. Together with some of the one-subject rule cases, they provide precedent

143. *See supra* notes 104-16 and accompanying text.

for the principle that the one-subject rule is intended to adjust the balance between legislative power to draft laws and executive power to disapprove them. In some cases, the courts effectively established, in the name of the item veto, a subject veto applicable to appropriation bills.

Indeed, one might argue that the adoption of an explicit item veto, especially when it occurred after the adoption of the one-subject rule, represents the limit of the legislative-executive power readjustment. The item veto, however, addresses concerns distinct from, albeit related to, those underlying the one-subject rule. Accordingly, it is in some ways broader, in other ways narrower, than the proposed subject veto. As a device intended to provide the governor with greater control over the budget process, the item veto does not restrict the governor to disapproval of measures that are nongermane to the rest of the bill. Regardless of whether a provision is an integral part of the legislature's budget plan, if it fits the description of an "item," it is subject to disapproval. On the other hand, this broad veto power, as a rule, is unique to appropriation bills. To the extent that the item veto has come to resemble a subject veto, it is a matter of judicial attempts to protect the general veto—protection more appropriately and effectively accomplished through the vehicle of the one-subject rule.

Admittedly, judicial implementation of a subject veto would create a gubernatorial power that, in most states, does not now exist. To some, undoubtedly, it would be an example of excessive judicial activism. It would not, however, be inconsistent with common-law principles. One of the sounder rules of statutory construction, especially applicable in constitutional interpretation, provides that, in interpreting laws, the courts should apply each provision with an eye toward the others. The instrument should be read as a whole, and interrelated sections should be applied in conformity with the overall scheme.[144] Application of this principle to the one-subject rule and the general veto power supports judicial recognition of a subject veto. In short, the subject veto should be seen as a variety of the general veto, justified by the history and purposes of the one-subject rule.

Conclusion

At present, in all states but one,[145] a governor faced with a multisubject, nonappropriation bill cannot excise those subjects of which he or she disapproves. Although the one-subject rule was designed to prevent this situation, it occurs nevertheless. Unfortunately, judicial enforcement of

144. *See* Fields v. Fong Eu, 18 Cal. 3d 322, 329, 559 P.2d 729, 733, 134 Cal. Rptr. 367, 371 (1976); People v. Western Air Lines, 42 Cal. 2d 621, 637, 268 P.2d 723, 732, *aff'd*, 348 U.S. 859 (1954). *See generally* 2A N. SINGER, SUTHERLAND'S STATUTORY CONSTRUCTION § 1.02 (4th ed. 1984).

145. Washington allows partial veto of any bill. WASH. CONST. art. III, § 12 (1966).

the rule, by itself, does not meet the rule's objectives. While the item-veto cases provide limited protection for the general veto power in appropriation bill cases, their rationale is unnecessarily restrictive and unconvincing. Such cases are an attempt to enforce the one-subject rule with a device ill suited to that end.

In *Harbor v. Deukmejian,*[146] a California appellate court ducked the opportunity to recognize a subject veto. As a result, the decision distorted the concept of the item veto, offering no clear rationale or standard for determining when the partial veto of a nonappropriation bill is permissible. However, this question was left open, and the California Supreme Court has granted review.

Initially, the subject veto may appear to be a dramatic expansion of gubernatorial power. Upon closer examination, however, it becomes clear that such a veto is merely a means of rendering the one-subject rule self-executing. It makes little sense to create a constitutional provision that ostensibly redistributes power within the branches of government, but to enforce it so haphazardly that no genuine redistribution takes place. The subject veto would provide the means to eliminate this anomaly and preserve the proper balance between the legislative and executive branches of state government.

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146. 176 Cal. App. 3d 813, 222 Cal. Rptr. 382, *review granted,* (S.F. 24837), *reprinted without change to permit tracking pending review,* 185 Cal. App. 3d 299 (1986); *see supra* notes 118-29 and accompanying text.

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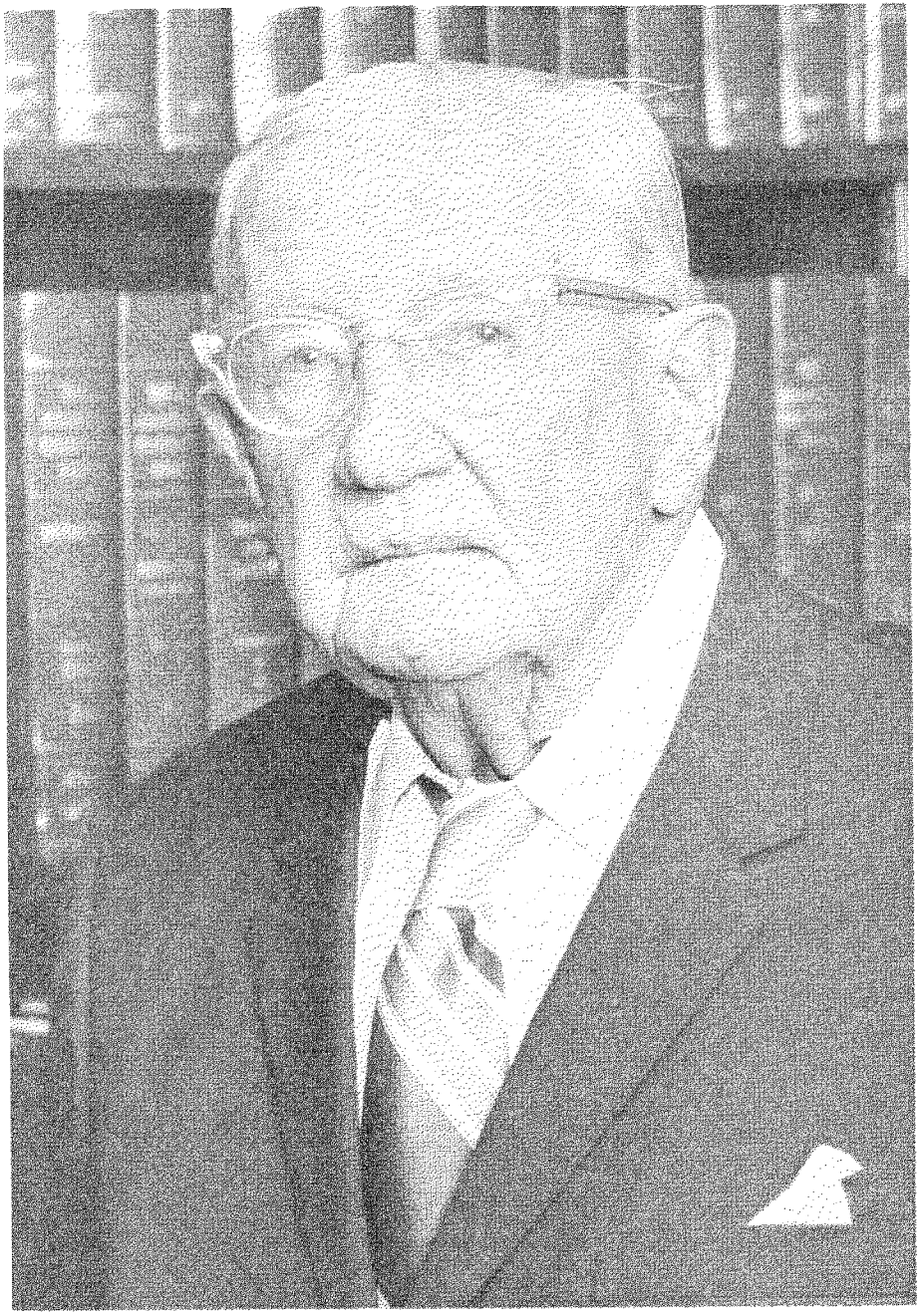

JUSTICE A. FRANK BRAY

This Issue Is Dedicated to
the Memory of
Justice A. Frank Bray